

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Case No. 01-bk-01139
)	Chapter 11
W.R. GRACE & CO., et al.,)	Judge Kevin Gross
)	
Debtors.)	Appeal No.: 17-cv-1588-LPS
_____)	

**UNITED STATES' DESIGNATION OF RECORD ON APPEAL
AND STATEMENT OF ISSUES**

DESIGNATION OF RECORD

Pursuant to Federal Rule of Bankruptcy Procedure 8009(a) and Local Rule 8009-1, the United States designates the following items to be included in the record on appeal¹:

1. Dkt. No. 16069 – Debtors' Twenty-Third Omnibus Objection to Certain IRS Claims
(Substantive)
2. Dkt. No. 16235 – Response to Debtors' Twenty-Third Omnibus Objection
3. Dkt. No. 16366 – Order Disallowing and Expunging Certain Claims and Reducing
Certain Other Claims of the Internal Revenue Service
4. Dkt. No. 26155 – Recommended Findings of Fact, Conclusions of Law and Order
Regarding Confirmation of First Amended Joint Plan of Reorganization as Modified
Through December 23, 2010
5. Dkt. No. 26289 – Order Clarifying Memorandum Opinion and Order Confirming Joint
Plan as Amended Through December 23, 2010

¹ Where a listed docket item included attachments, the United States designates all such attachments as part of the record on appeal.

6. Dkt. No. 26368 – First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of W. R. Grace & Co., et al, the Official Committee of Asbestos Personal Injury Claimants, the Asbestos PI Future Claimants’ Representative, and the Official Committee of Equity Security Holders as Modified Through December 23, 2010
7. Dkt. No. 32036 – Reorganized Debtors’ Objection to the Remaining Claims of the Internal Revenue Service (Substantive)
8. Dkt. No. 32529 – Notice of Withdrawal Regarding Reorganized Debtors’ Objection to the Remaining Claims of the Internal Revenue Service (Substantive)
9. Dkt. No. 32854 – Motion for Entry of an Order Enforcing Plan and Confirmation Order against Internal Revenue Service
10. Dkt. No. 32877 – United States’ Opposition to Debtors’ Motion to Enforce
11. Dkt. No. 32891 - Reply to United States’ Opposition to Debtors’ Motion to Enforce
12. Dkt. No. 929624 – Letter to the Court from the United States
13. Dkt. No. 32941 – Letter to the Court from the Debtors
14. Dkt. No. 32954 – Memorandum Opinion
15. Dkt. No. 32955 – Order Enforcing Plan and Confirmation Order Against Internal Revenue Service
16. Dkt. No. 32970 – United States’ Notice of Appeal
17. Transcript of Hearing Held on September 19, 2017

STATEMENT OF ISSUES

1. Whether the Internal Revenue Service improperly used the Internal Revenue Code’s interest rate for tax underpayments when initially calculating the underpayment interest that it then deducted from the refund it ultimately paid to the debtors for their

- tax year 1998; instead, the Bankruptcy Court ruled that, when the IRS was making this first part of the calculation of how much it owed to the debtors, the IRS should have used the 4.19% interest rate the debtors' plan of reorganization provided for payment on an "Allowed Priority Tax Claim."
2. Whether the underpayment interest the IRS deducted from the amount it owed as a refund to the debtors constituted a "Claim" as defined by the debtors' plan of reorganization.
 3. If the underpayment interest did constitute a "Claim," whether it was an "Allowed" claim as defined by the debtors' plan of reorganization?

DATE: November 16, 2017

Respectfully submitted,

DAVID HUBBERT
Deputy Assistant Attorney General

/s/ Ward W. Benson
WARD W. BENSON
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 227, Ben Franklin Station
Washington, DC 20044
Tel: (202) 514-9642
Fax: (202) 514-6866
Email: wardlow.w.benson@usdoj.gov

CERTIFICATE OF SERVICE

I certify that the foregoing DESIGNATION OF RECORD ON APPEAL was filed with the clerk of the court on November 16, 2017, using the CM/ECF system, which will send notification of such filing to all parties appearing in said system.

/s/ Ward W. Benson
WARD W. BENSON